



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 9, 2003

Ms. Traci S. Briggs  
Assistant City Attorney  
City of Killeen  
101 North College  
Killeen, Texas 76541

OR2003-2390

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179082.

The City of Killeen (the "city") received a request for a complete copy of the file maintained by or on behalf of the Killeen Police Department pertaining to Case No. 02-007811. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information expressly public unless its is confidential under other law. Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

....

(17) information that is also contained in a public court record.

Gov't Code § 552.022(a)(17) (emphasis added). The submitted information includes a document that has been filed with a court. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, we have marked the sexual assault victim's identifying information that the city must withhold pursuant to section 552.101 and common-law privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982).

We point out, however, that you may not withhold similar information from the document subject to section 552.022(a)(17) of the Government Code. This document, which we have marked, must be released in its entirety. *See Star-Telegram v. Walker*, 834 S.W.2d at 57-58 (sexual assault victim's privacy right not violated by release of information in public court document). In *Star-Telegram v. Walker* the sexual assault victim's name became part of the public record because it was used in the indictment, motion in limine, and the charge to the jury. Thus, the court held that a trial court may not prohibit a newspaper from disclosing the victim's true identity when the information was obtained from the public record. *Id.* at 58. Accordingly, as the submitted affidavit for arrest is filed with a court, the city may not withhold the victim's name under section 552.101 because the sexual assault victim's name is used in a public record.

We note that the submitted documents contain social security numbers that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act (the "Act") on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes

criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

We also note that some of the submitted documents are medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the documents to show which are medical records subject to the MPA.

The submitted information also contains bank account and credit card numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the marked bank account and credit card numbers under section 552.136.

Finally, we note that some of the information in the submitted reports must be withheld under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the city must withhold the Texas driver's license numbers, license plate numbers, vehicle identification numbers, and other information we have marked in the submitted documents under section 552.130.

To summarize, we conclude that: (1) the submitted document filed with a court may not be withheld from disclosure pursuant to section 552.022(a)(17) of the Government Code; (2) the city must withhold the sexual assault victim's identifying information, which we have marked, under section 552.101; (3) prior to releasing any social security numbers, the city should ensure no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990; (4) the submitted medical records, which we have marked, may be released only as provided under the MPA; (5) the city must withhold the bank account and credit card numbers, which we have marked, under section 552.136; and (6) the city must withhold the Texas driver's license numbers, license plate numbers, vehicle identification numbers, and other information we have marked in the submitted documents under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 179082

Enc. Submitted documents

c: Nick R. Bray  
Naman Howell Smith & Lee  
P. O. Box 1470  
Waco, Texas 76703  
(w/o enclosures)